SINGLE BENCH

e-5-1001

(1) (3)

IN THE HIGH COURT OF JUDICATURE OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO. 3108 /2005

PETITIONER:-

1. M/s. Pooja Flour Mills(Pvt.) Limited
Through:- Proprietor
Nand Kishore Agrawal Aged About 39 years
S/o- Late Piramal Agrawal
Ramsagarpara Raipur (C.G.)

P.R. No. 2042/05
Presented by Shri Vivek Rathore
dated 05.05.05

VERSUS

RESPONDENTS:-

1. Food Corporation of India
(A constituted body under
Food Corporation of India Act
under 1964),
Head Office- 16-20
Barah Khambha Lane(New Delhi)
Regional Office,
Through District Manager
District: - Raipur (C.G.)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA.

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(40)

आदेश पत्रक

मामला क्रमांक W.P. 3108/05 **सन्** **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

17.8.2005

Shri Y.C. Sharma, counsel for the petitioner.

Heard.

The petitioner has preferred this petition under Article 227 of the Constitution of India questioning the legality, propriety and correctness of order dated 16.3.2005 passed by learned 3rd Additional District Judge, Raipur in Civil Suit No.4B/2002 whereby the learned Additional District Judge has closed the right of defence of the petitioner herein.

Breif facts leading to filing of this petition are that the respondent herein filed a civil suit against the petitioner herein for recovery of Rs.4,79,301.75 paise. During the pendency of civil suit the respondent herein filed an application under Order 11 Rule 14 of the CPC for production of documents i.e. Release Order No.007548 dated 17.11.1999 & Release Order No.007554 dated 18.11.1999. However, the petitioner failed to produce the said release orders inspite of Court's order on this application, upon which the respondent herein again filed an application under Order 11 Rule 21 of the CPC on account of non-complaince of the order for production of documents. In reply of the same, the petitioner herein admitted the fact that these two release orders were handed over to him but even after making efforts to trace out these orders same are not available with him and an affidavit to that effect was also filed by the petitioner herein. But the learned court below passed the impugned order that since the petitioner has not complied with the Court's order and has simply stated that documents are not traceable, which is not a sufficient

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आदेश पत्रक

मामला क्रमांक MCB/08/05 **सन्** **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

ground, therefore, the defence of the petitioner is struck out under the provisions of Rule 21 of Order 11 of the CPC.

I have heard learned counsel for the petitioner.

Mr. Sharma argued that there is no finding of the court below that the petitioner herein has deliberately or willfully failed to comply with the Court's order and without which the Court below was not justified in passing the impugned order, which is a penal in nature, as the whole defence of the petitioner herein has been struck out and now he will not be able to defend his case properly, which will result in automatic decree of suit and in support of his argument he placed reliance on the decision of M.P. High Court passed in the **Misc. (First) Appeal No.186/69 between Raghunandan Singh Vs. Municipal Council, Dhamtari dated 17.8.1973** in which the M.P. High Court has held that since the provisions of Order 11 Rule 21 being penal in their nature must be construed strictly. Even where the parties apply for an order under this Rule, the Court should not impose penalty except in extreme cases and on a last resort. The plaintiff's failure to comply with an order for discovery does not automatically entitle the defendant to order the dismissal of suit under Order 11 Rule 21 of the CPC.

It is true that the consequences of order passed under Rule 21 of Order 11 are penal in nature and if the defence is struck out, as has been done in the present case, the only consequence will be that the petitioner herein will not be able to defend the suit filed by the respondent herein in a proper manner. As has been held in the above judgment of M.P. High Court that these powers should be exercised in

XI-HC-78

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मामला क्रमांक WP 3108/05 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

extreme cases and as a last resort, therefore, in the first instance, the trial Court was required to ascertain from the facts or draw an inference from the facts that as to whether the petitioner herein has failed to comply with the Court's order deliberately or willfully. The trial Court has not recorded his finding to this effect in the impugned order, therefore, the order impugned is not in conformity with the requirement of Rule 21 of Order 11 of the CPC and same is liable to be quashed.

In this connection, it is relevant to mention that in such cases the Court is entitled to draw an adverse inference under Section 114(g) read with Section 103 of the Evidence Act to the effect that the petitioner has not produced that document same being unfavourable to the petitioner and that is why he has withhold it, and for this view I am supported by the judgment of the Hon'ble Apex Court in the matter of **Gopal Krishanji Ketkar V Mohammed Haji Latif and others** reported in **AIR 1968 Supreme Court 1413**.

Therefore, without issuing notice to the respondent the order impugned is set aside for the reasons mentioned above and the trial Court is directed to consider the application afresh in the light of above observations and decide the same after hearing both the parties. However, liberty is given to the respondent to approach this Court if he feels aggrieved by this order.

With the direction and observation aforesaid, the petition stands disposed of.

Certifried copy as per rules.

Sd/-
L.C.Bhadoo
Judge

Roshan/-

18.8.05